

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAROL J. SCHIAVO, MARTIN BANYARD
and DERRIELL DORSEY,

Plaintiffs,

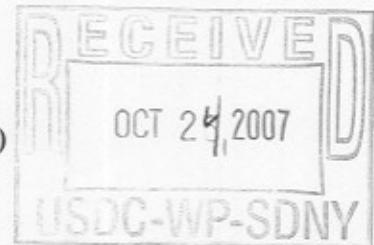
-against-

R. JAMES NICHOLSON in his official capacity
as Secretary of Veterans Affairs,

Defendant.

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ECF CASE

07-Civ-6666 (SCR)



**AMENDED
COMPLAINT**

**PLAINTIFFS DEMAND
A JURY TRIAL**

Plaintiffs, **CAROL J. SCHIAVO, MARTIN BANYARD and DERRIELL DORSEY**, by
their attorneys **ROBERT DAVID GOODSTEIN, ESQ.**, complaining of defendant's actions in his
official capacity state as follows:

1. This is an action for injunctive, legal, and declaratory relief brought on behalf of
Plaintiffs, CAROL J. SCHIAVO, MARTIN BANYARD and DERRIELL DORSEY, employees of
The Department of Veterans Affairs. The plaintiffs have suffered discrimination on the basis of
religion, in violation of TITLE VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e
et seq. (Title VII). If defendant is not enjoined, plaintiffs may continue to be subjected to
discrimination.

2. This Court has subject matter jurisdiction over this Complaint, pursuant to 28 U.S.C.
§§1131 and 1343 (a)(4), 42 U.S.C. §§ 2000e-16(d) and 2000e-5(f)(3), and the Declaratory Judgment
Act, 28 U.S.C. §2201.

3. Venue is proper in this district pursuant to 28 U.S.C. §1391 and 42 U.S.C. § 2000e-
5(f)(3).

4. Plaintiffs are Registered Nurses employed at the Veterans Administration Hudson Valley facility located in Montrose, New York. Plaintiffs are not Muslims.

5. Defendant, R. James Nicholson, is the Secretary of Veterans Affairs and is named as defendant in this action in his official capacity as head of the Department of Veterans Affairs. The Department of Veterans Affairs is headquartered in Washington D.C., and is an executive department of the Federal Government of the United States of America.

6. In its employment practices, the Department of Veterans Affairs favors Muslims over non-Muslims because of their religion.

7. Two Muslim nurses who work in the same unit as plaintiffs requested that they not work evening or weekend tours due to religious reasons.

8. In contradiction of plaintiffs' rights, allegedly to accommodate the Muslim nurses request, the non-Muslim nurses, including plaintiffs, were forced to work additional "off-tours" meaning evening and weekend tours. This assignment was undesirable.

9. The plaintiffs have sought to end this "unreasonable accommodation" but have failed because of the Department of Veterans Affairs discrimination on the basis of religion.

10. Alvin Miller, the EEOC Specialist for the VA Hudson Valley Facility, informed management "that they should provide a temporary relief to the Muslim nurses (taking them out of the night and evening rotation) until we can resolve this issue...". Following this advice, Sandra Y. Griffin, then Associate Director of Patient Care/Nursing Services temporarily, granted the religious accommodation requested by the Muslim nurses.

11. The granting of this "accommodation" was blatant discrimination based on religion against non-Muslims. Based on this "accommodation" plaintiffs at bar were compelled to work the

non-desirable shifts. Further, the so called "accommodation" was made contrary to the procedures of the Department of Veterans Affairs to determine whether a religious accommodation should be granted.

12. This case has fulfilled all procedural prerequisites. The matter was before the Administrative Law Judge of the United States Equal Employment Opportunity Commission who issued a decision dismissing the charge without a hearing. Plaintiff Schiavo received transmittal of Final Agency Decision or order by document dated April 26, 2007. Plaintiff Banyard received ~~transmittal of Final Agency Decision by~~ document dated May 10, 2007. Plaintiffs have a total of 90 days from their receipts of the EEOC's Final Decisions to file this action. Therefore, this action is timely filed. Plaintiff Dorsey received transmitted of Final Agency Decision by document dated April 15, 2007. Mr. Dorsey filed an appeal to the United States Equal Opportunity Commission. On September 7, 2007 EEOC affirmed the final decision. This Amended Complaint is filed on behalf of plaintiff Dorsey within ninety (90) days of said affirmation.

13. Defendant has violated Title VII and will continue to violate Title VII if not enjoined because the Department of Veterans Affairs maintains policies, programs and classifications that impermissibly discriminate on the basis of religion. Accordingly, defendant has taken personnel actions in violation of Title VII's mandate that plaintiffs be free from any discrimination based on religion.

WHEREFORE, plaintiffs respectfully request that this Court enter a judgment for plaintiffs awarding the following relief;

a. A permanent injunction prohibiting defendant, as head of the Department of Veterans Affairs, and his employees, agents, officers, representatives and servants

from giving a "reasonable accommodation" to Muslim nurses which forces non-Muslim nurses to work "off tours";

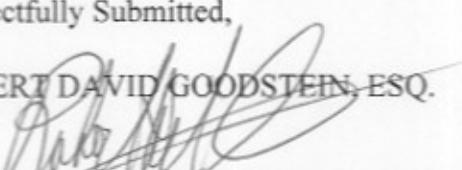
- b. A declaratory judgment that defendant, as head of the Department of Veterans Affairs, violated plaintiffs' rights under Title VII;
- c. An award on compensatory damages for plaintiffs' mental anguish, humiliation, pain and suffering;
- d. An award to plaintiffs for attorneys fees and costs of suit; and
- e. an award of such other relief is to the Court seems just and proper.

Dated: New Rochelle, New York
October 18, 2007

Respectfully Submitted,

ROBERT DAVID GOODSTEIN, ESQ.

By:


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